

1
2
3
4
5
6
7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 JAMES H. FISHER,

11 Plaintiff,

No. CIV S-05-0540 MCE PAN P

12 vs.

13 N. DIZON, et al.,

14 Defendants.

FINDINGS & RECOMMENDATIONS

15 _____/
16 Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to
17 42 U.S.C. § 1983. On October 24, 2005, plaintiff filed a motion for preliminary injunction.
18 Plaintiff moves for a preliminary injunction directing plaintiff be housed in a cell by himself and
19 prohibiting prison officials from searching his cell in his absence unless they document the
20 reasons for the search. Plaintiff alleges Officers Wann, Thumpster, Anderson and Parks denied
21 plaintiff access to legal materials while plaintiff was in administrative segregation, Officer
22 Brown has attempted to foster resentment and anger of other prisoners towards plaintiff, and
23 other unnamed officers have destroyed his legal papers.

24 The legal principles applicable to a request for injunctive relief are well
25 established. To prevail, the moving party must show either a likelihood of success on the merits
26 and the possibility of irreparable injury, or that serious questions are raised and the balance of

1 hardships tips sharply in the movant's favor. See Coalition for Economic Equity v. Wilson, 122
 2 F.3d 692, 700 (9th Cir. 1997); Oakland Tribune, Inc. v. Chronicle Publ'g Co., 762 F.2d 1374,
 3 1376 (9th Cir. 1985). The two formulations represent two points on a sliding scale with the focal
 4 point being the degree of irreparable injury shown. Oakland Tribune, 762 F.2d at 1376. "Under
 5 any formulation of the test, plaintiff must demonstrate that there exists a significant threat of
 6 irreparable injury." Id. In the absence of a significant showing of possible irreparable harm, the
 7 court need not reach the issue of likelihood of success on the merits. Id.

8 In cases brought by prisoners involving conditions of confinement, any
 9 preliminary injunction "must be narrowly drawn, extend no further than necessary to correct the
 10 harm the court finds requires preliminary relief, and be the least intrusive means necessary to
 11 correct the harm." 18 U.S.C. § 3626(a)(2).

12 This action arises out of alleged events in 2004 during a period when plaintiff was
 13 incarcerated at California Medical Facility (CMF). Plaintiff claims that defendants, all of whom
 14 were prison officials at CMF at all times relevant to this action, violated his constitutional rights
 15 when defendants Dizon, Powers, Annunciation, Barrientos, Mendoza, Rosales, Swain, Yarber,
 16 Sumner and Newson repeatedly entered his cell at night for the sole purpose of threatening him
 17 with knives, defendants Dizon, Annunciation, Barrientos, Mendoza, Rosales and Swain allegedly
 18 battered plaintiff, and defendants Cry, St. Germain, Grannis, Pearson and Schwartz knew of the
 19 ongoing harassment and failed to stop them or to prevent the battery.

20 Initially, the principal purpose of preliminary injunctive relief is to preserve the
 21 court's power to render a meaningful decision after a trial on the merits. See C. Wright & A.
 22 Miller, 11 Federal Practice and Procedure, §2947 (1973). In addition to demonstrating that he
 23 will suffer irreparable harm if the court fails to grant the preliminary injunction, plaintiff must
 24 show a "fair chance of success on the merits" of his claim. Sports Form, Inc. v. United Press
 25 International, Inc., 686 F.2d 750, 754 (9th Cir. 1982), quoting Benda v. Grand Lodge of
 26 International Association of Machinists and Aerospace Workers, 584 F.2d 308, 315 (9th Cir.

1 1979). Implicit in this required showing is that the relief awarded is only temporary and there
2 will be a full hearing on the merits of the claims raised in the injunction when the action is
3 brought to trial.

4 In addition, as a general rule this court is unable to issue an order against
5 individuals who are not parties to a suit pending before it. Zenith Radio Corp. v. Hazeltine
6 Research, Inc., 395 U.S. 100 (1969).¹

7 Because plaintiff's challenge to the alleged actions of Officers Wann, Thumpster,
8 Anderson, Parks or Brown are not cognizable as part of the underlying complaint, this claim will
9 not be given a hearing on the merits at trial. Further, the claim does not implicate this court's
10 jurisdiction in a way that might justify application of the All Writs Act to reach other officials at
11 CMF who are not named in the underlying litigation. See footnote 1, supra. None of the
12 individuals named are parties and plaintiff makes no showing they have acted in concert or
13 participated with the named defendants. Plaintiff is therefore not entitled to a preliminary
14 injunction against Wann, Thumpster, Anderson, Parks or Brown, and the October 24, 2005
15 motion for preliminary injunction should be denied.

16 In accordance with the above, IT IS HEREBY RECOMMENDED that plaintiff's
17 October 24, 2005 motion for preliminary injunction be denied.

18 These findings and recommendations are submitted to the United States District
19 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty
20 days after being served with these findings and recommendations, any party may file written
21 objections with the court and serve a copy on all parties. Such a document should be captioned
22

23 ¹ The fact that injunctive relief is sought from one not a party to litigation does not
24 automatically preclude the court from acting. The All Writs Act, 28 U.S.C. § 1651(a) permits the
25 court to issue writs "necessary or appropriate in aid of their jurisdictions and agreeable to the
26 usages and principles of law." The All Writs Act is meant to aid the court in the exercise and
preservation of its jurisdiction. Plum Creek Lumber Company v. Hutton, 608 F.2d 1283, 1289
(9th Cir. 1979). The United States Supreme Court has authorized the use of the All Writs Act in
appropriate circumstances against persons or entities not a party to the underlying litigation.
United States v. New York Telephone Co., 434 U.S. 159, 174 (1977).

1 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections
2 shall be served and filed within ten days after service of the objections. The parties are advised
3 that failure to file objections within the specified time may waive the right to appeal the District
4 Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

5 DATED: April 19, 2006.

6
7 
8 UNITED STATES MAGISTRATE JUDGE

9 1
10 fish0540.pi